

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

MAY 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992)MM Docket No. 92-259Broadcast Signal Carriage
Issues)

To: The Commission

PETITION FOR RECONSIDERATION

WTTE, Channel 28 Licensee, Inc. ("WTTE"), the licensee of television station WTTE(TV), Channel 28, Columbus, Ohio, by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petitions the Commission to reconsider one aspect of the Report and Order in the above-captioned proceeding, FCC 93-144, released March 29, 1993 ("R&O")^{1/} -- specifically, the modification of the market list in Section 76.51 of the Commission's Rules renaming the Columbus, Ohio market to include the community of Chillicothe, Ohio. R&O, para. 50. As set forth below, this redesignation was made on the basis of pleadings by a Chillicothe station licensee on which interested parties had no opportunity to comment and which in fact totally fails to

the Columbus market in Section 76.51 as "Columbus-Chillicothe" should therefore be vacated.

Introduction

1. The redesignation of the Columbus market to include Chillicothe was one of three modifications made in the R&O to the market list contained in Section 76.51. According to the R&O, these three changes were made because parties in this proceeding had provided "specific evidence that change to a particular market is warranted." R&O, para. 50.

2. The "evidence" on which the Commission renamed the Columbus market to include Chillicothe apparently took the form of comments filed by Triplett & Associates, Inc., Debtor-in-Possession ("Triplett"), the licensee of television station WWAT(TV), Chillicothe, Ohio. Triplett's comments were not substantive in and of themselves; they merely contained copies of an April 19, 1988 Petition for Rule Making ("Triplett Petition") requesting a Columbus-Chillicothe redesignation and two supplements to the rulemaking petition, filed, respectively, on June 21, 1991 and January 4, 1993.

3. Neither Triplett's comments in this proceeding nor any of the filings attached thereto were served on WTTE. A notice of proposed rulemaking concerning the redesignation of the Columbus market was never issued, as it had been in the case of the Commission's change of the Atlanta, Georgia market to include Rome, Georgia. See Notice of Proposed Rule Making in MM Docket

No. 92-295, 7 FCC Rcd 8591 (1992). Furthermore, the Notice of Proposed Rule Making in this proceeding, 7 FCC Rcd 8055 (1992) made no mention of Triplett's proposal to redesignate the Columbus market.

4. Thus, Triplett has achieved the redesignation of the Columbus market through pleadings on which WTTE has never been afforded the opportunity to comment. WTTE is now taking its first available opportunity to address Triplett's proposal, and below, WTTE shows that there is no support for the redesignation the Commission has made. The Commission should reconsider the R&O, and eliminate the community of Chillicothe from the Section 76.51 market list.

Discussion

I. Columbus and Chillicothe Have Insufficient Commonality to Be Considered a Single Hyphenated Market

5. In considering modifications to the market list in Section 76.51, the primary consideration is the "commonality between the proposed community to be added to a market designation and the market as a whole." R&O, para. 50. Triplett's only showing in this regard was to state that the Grade B contours of the Columbus VHF stations cover Chillicothe,^{2/} that WWAT(TV) places "City Grade coverage over the center of Columbus" and Grade A coverage over "substantially

^{2/} However, WTTE(TV), a UHF independent/Fox affiliate licensed to Columbus, does not provide a Grade B signal over Chillicothe.

all of the remainder of the city," and that Ross County, in which Chillicothe is situated, is part of the Columbus ADI as defined by Arbitron. Triplett Petition at 2; Second Supplement to Petition for Rule Making at 1-2.

6. These recitations fall far short of proving the

proposed ADI is a reasonable approximation of Columbus and Chillicothe a

located to the north and east of Columbus, to which the station does not even provide a Grade B signal. These unserved areas of the ADI include Hardin County (11,200 TV households), Marion County (23,200 TV households), Crawford County (18,300 TV households), Coshocton County (13,300 TV households), Knox County (17,300 TV households), Morgan County (5,100 TV households), Morrow County (9,800 TV households), and portions of Union County (11,400 TV households), Delaware County (24,700 TV households), and Licking County (48,000 TV households).^{5/} The Columbus television stations provide Grade B service to portions of, and in most cases, the entirety of, all these counties.^{6/}

8. Triplett also claimed that since WWAT(TV)'s program schedules are published in a Columbus daily newspaper, "Station WWAT is considered a local television station in Columbus." Triplett's Second Supplement to Petition for Rule Making, Att. B, at 1. What Triplett did not state is that the listings it cites also contain the program schedules of Channel 56, a low power television station that is not even viewable in Columbus. Thus, Triplett's newspaper listings are incompetent to establish that WWAT(TV) is any sense a "local" Columbus station.

9. It is not enough for Triplett to state, in support of a modification of Section 76.51, that Chillicothe is within the Columbus ADI. See R&O, paras. 51, 54 (recognizing that a station

^{5/} See 1993 Television & Cable Factbook, pp. A-883, C-39.

^{6/} See id., pp. A-895 through 898. The only exception is that WTTE(TV)'s Grade B signal does not reach to Morgan County.

might be entitled to must-carry status under new rules but still be considered a distant signal for copyright purposes; nonetheless retaining distinction between ADIs and Section 76.51 market list). Nor is it enough to state that WWAT(TV) provides a signal over Columbus itself. The facts are that Columbus and Chillicothe are separate, dissimilar communities some 45 miles apart, and that WWAT(TV) does not provide service to many of the areas served by the Columbus stations. Thus, Triplett has not shown sufficient commonality between the two communities to warrant their treatment as a single hyphenated market.

II. Triplett Failed to Demonstrate a Need for the Addition of Chillicothe to the Columbus Market

10. It is well-settled that in order to redesignate a market in Section 76.51, the proponent must make "a clear showing of a particularized need" for the redesignation. Notice of Proposed Rule Making in MM Docket No. 92-295 (Rome, Georgia), 7 FCC Rcd 8591, 8592 (1992). Such a showing is absent in Triplett's submissions to the Commission.

11. The central premise of Triplett's request is that WWAT(TV) is somehow entitled to compete as a Columbus station. Triplett claimed in its pleadings that absent a modification of Section 76.51 to include Chillicothe in the Columbus market, WWAT(TV) would be treated as a distant signal resulting in increased copyright liability to Columbus cable operators for the station's carriage, thereby reducing WWAT(TV)'s chances of being

carried by cable systems in metropolitan Columbus. Triplett even went so far as to state that absent such relief, WWAT(TV) "cannot reach a large segment of the population which it was licensed to serve, presently some 59,206 homes in the core market of Columbus." Triplett Petition at 8-9.

12. In the first place, WWAT(TV) is not "licensed to serve" Columbus -- it is licensed to serve Chillicothe. The Commission licenses television stations to communities, not to markets. What Triplett seeks amounts to dual city licensing of its station. The Commission has expressly held, however, that "[n]o television station may be licensed to more than one community at a time." TV Cable of Carlisle, 1 FCC Rcd 117, 118 (1986); see also Edward M. Johnson, 50 R.R.2d 435, 436 (B. Bur. 1981). Moreover, the community of Columbus has an abundance of television stations licensed to it, all of which are obligated to serve the specific needs and interests of that community. WWAT(TV) is tasked to serve the needs and concerns of Chillicothe, not of Columbus.

13. Yet nowhere did Triplett state in its pleadings that it has even attempted to serve the community of Chillicothe. Chillicothe is not an outlying junction; it is a considerably sized community of some 21,923 people (1990 U.S. Census population). Presumably cable systems in Chillicothe and surrounding areas carry WWAT(TV); Triplett has not claimed otherwise. Even assuming that WWAT(TV) cannot reach a single television household in Franklin County, where the Columbus

metropolitan area is situated, the seven other counties "principally included" in WWAT(TV)'s Grade B contour (see Triplett Petition at 2) have a combined total of 117,300 television households.^{7/} No less than 54 independent ADIs have smaller numbers of television households.^{8/} Moreover, as noted above, Chillicothe is a type of community entirely different from Columbus, with accordingly different needs and interests to be addressed. Triplett and WWAT(TV) are obligated first and foremost to serve those needs and interests -- not to seek to become a Columbus station.

14. It appears, however, that Triplett has failed to adequately serve these local needs. Ratings data reviewed by WTTE indicates that WWAT(TV)'s viewership even in its home county of Ross (where it is carried on cable systems) is woefully low. Thus, at bottom, Triplett's quest to include Chillicothe in the Columbus market is an attempt to evade its own failings. If WWAT(TV) is suffering financially, it is due to Triplett's mismanagement and WWAT(TV)'s lack of success in attaining popularity even in its own community -- not the operation of the Commission's rules.

15. Indeed, WWAT(TV) has had ample opportunity to obtain the relief it seeks without attempting a redesignation of the Columbus market. WWAT(TV) could long ago have relieved Columbus

^{7/} See 1993 Television and Cable Factbook, p. C-39.

^{8/} See id., pp. A-2, A-3.

cable systems of additional copyright liability for carriage of its signal by filing for and obtaining "significantly viewed" status in counties outside its 35-mile zone.^{9/} Yet WWAT(TV), by its own concession (see Triplett's Supplement to Petition for Rule Making at 6 n.4), has apparently been unable to achieve significant viewing status in the Columbus area. Once again, therefore, Triplett's prior inability to achieve the relief it seeks is due to its own failure to provide a service that Columbus viewers will watch.

16. The proponent of a request to modify the Section 76.51 market list must show a "public need" for the modification, not just a private economic need. See Amendment of Section 76.51 of the Commission's Rules and Regulations (Television Muscle Shoals, Inc.), 48 R.R.2d 1191, 1194 (1981) (emphasis in original). Triplett wants WWAT(TV) to compete as a Columbus television station, while the facts indicate that WWAT(TV) is not of interest to viewers there. Triplett has never shown the requisite public need for redesignating the Columbus market to include Chillicothe, and this failure bars the grant of Triplett's requested relief.

^{9/} For instance, WTTE has, during its years of operation, filed for "significantly viewed" status in additional counties within the Columbus ADI in order to secure additional cable carriage and relief from copyright royalty payments on behalf of cable systems serving those counties. There is no reason that WWAT(TV) could not have done so as well.

Conclusion

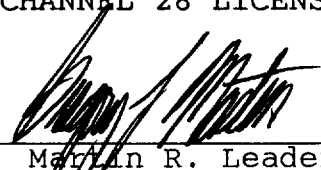
The Commission has included Chillicothe in the Columbus market, effectively deeming WWAT(TV) a Columbus station, on the basis of pleadings that WTTE had no prior opportunity to address and that fail to warrant the relief the Commission has granted. At bottom, the Commission has allowed Triplett to evade its own operational malfeasance, by effectively relicensing WWAT(TV) from the distant and distinct community it is licensed to serve to a major metropolitan community that WWAT(TV) has not and cannot adequately serve. The Commission should now take notice of the real circumstances surrounding Triplett's request, and accordingly reconsider and reverse its modification of the Columbus market to include Chillicothe.

Respectfully submitted,

WTTE, CHANNEL 28 LICENSEE, INC.

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By:


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Its Attorneys

Dated: May 3, 1993

Declaration of
John T. Quigley

DECLARATION OF JOHN T. QUIQLEY

I, John T. Quigley, hereby state as follows:

1. I am the General Manager of television station WTTE(TV), Channel 28, Columbus, Ohio. I have reviewed the comments filed in this proceeding by Triplett & Associates, Inc., Debtor-in-Possession ("Triplett"), the licensee of television station WWAT(TV), Chillicothe, Ohio, as well as the pleadings attached to Triplett's comments. Each of these filings urges the FCC to redesignate its list of television markets to redesignate the Columbus, Ohio market as the hyphenated market of Columbus-Chillicothe.

2. I am familiar with the community of Columbus, as well as the community of Chillicothe, Ohio, which is some 45 miles distant from Columbus. Chillicothe and Columbus are entirely different from a socioeconomic perspective. Columbus, the state capital of Ohio, is an urban, cosmopolitan community and a center of banking, commerce, insurance, research, education and telecommunications. Chillicothe is primarily rural and agricultural, with a light scattering of manufacturing businesses.

3. Triplett claims that WWAT(TV) places "an F.C.C. Grade A television signal over substantially the entire Columbus metropolitan area." However, WTTE(TV) personnel have undertaken periodic checks of WWAT(TV)'s signal in northern Franklin County, the county in which Columbus is located. These checks have revealed that WWAT(TV) places a highly deficient signal over that area.

4. Triplett also claims that since WWAT(TV)'s program schedules are published in a Columbus daily newspaper, "Station WWAT is considered a local television station in Columbus." The listings that Triplett provides, however, also contain the

program schedule of Channel 50. Channel 50 is a pay-per-view

CERTIFICATE OF SERVICE


I, Valerie A. Mack, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "PETITION FOR RECONSIDERATION" were sent this 3rd day of May, 1993, by first class United States mail, postage prepaid, to the following:

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